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Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention, 1975): Revision of the Convention: Draft Annex 11 to the TIR Convention

Other legal provisions

Note by the secretariat

I. Background and mandate

1. At its 149th session, the Working Party took note that the Office of Legal Affairs (OLA) – Treaty Section had informed the secretariat that it would not be possible to introduce the opt-out clause for Annex 11 by means of a reservation, as proposed in new Article 58, paragraph 1 bis, considering that the Vienna Convention on the Law of Treaties (1969) only allows reservations to legal instruments at the moment of accession and not later on. Taking this into account, the secretariat informed the Working Party that it would submit a new proposal, stipulating that Annex 11 would come into force by a certain deadline for all Contracting Parties, except for those that would notify the depositary, in writing, before that same or another deadline of their non-acceptance of the Annex. Most likely, the proposal would take the shape of amendments to the new Article 60 bis on the introduction and amendment procedure for Annex 11. These proposals would not materially impact the application of the provisions of Annex 11.

2. In this context, the delegation of the European Union proposed to review the decision-making mechanism as contained in Article 4 of draft Annex 11, possibly in combination with the introduction of a transitional period for Contracting Parties that (a) would accept Annex 11, but (b) not apply eTIR in the first phase. It its view, it seemed not correct to exclude this group of countries from the decision-making procedure as proposed in said Article 4. In reply, the secretariat proposed to consider introducing a clear

differentiation between the moment a Contracting Party would accept Annex 11 and the moment that it would start implementing the Annex (see ECE/TRANS/WP.30/296, paras. 23 and 24).

3. The Working Party requested the secretariat to prepare an amended version of the proposals related to the introduction of Annex 11, in particular, but not limited to, taking into account the considerations by OLA.

4. Further to this request, the secretariat prepared this document, which should be read and understood in consultation with document ECE/TRANS/WP.30/2018/4.

II. Consolidated draft eTIR legal framework[1]

A. Amendments to the TIR Convention

1. Article 1, new paragraph (s)

(s) The term "eTIR procedure" shall mean the TIR procedure, implemented by means of electronic exchange of data, which provides the functional equivalent to the TIR Carnet. The eTIR procedure is carried out in accordance with the provisions of Annex 11.

2. Article 43

The Explanatory Notes set out in Annex 6, ~~and~~ Annex 7, Part III, ***and Annex 11, Part II*** interpret certain provisions of this Convention and its Annexes. They also describe certain recommended practices.

3. New Article 58 quarter

A Technical Implementation Body shall be established. Its composition, functions and rules of procedure are set out in Annex 11.

4. Article 59

1. This Convention, including its Annexes, may be amended upon the proposal of a Contracting Party by the procedure specified in this Article.

2. ***Except as provided for under Articles 60 bis,*** any proposed amendment to this Convention shall be considered by the Administrative Committee composed of all the Contracting Parties in accordance with the rules of procedure set out in Annex 8. Any such amendment considered or prepared during the meeting of the Administrative Committee and adopted by it by a two-thirds majority of the members present and voting shall be communicated by the Secretary-General of the United Nations to the Contracting Parties for their acceptance.

3. Except as provided for under Articles 60 ***and 60 bis***, any proposed amendment communicated in accordance with the preceding paragraph shall come into force with respect to all Contracting Parties three months after the expiry of a period of twelve months following the date of communication of the proposed amendment during which period no objection to the proposed amendment has been communicated to the Secretary-General of the United Nations by a State which is a Contracting Party.

[1] Amendments as compared to the existing text of the Convention as well as new Articles are in ***bold italics***

4. If an objection to the proposed amendment has been communicated in accordance with paragraph 3 of this Article, the amendment shall be deemed not to have been accepted and shall have no effect whatsoever.

5. **New Article 60 bis**

Special procedure for the entry into force of Annex 11 and amendments thereto

1. Annex 11, considered in accordance with paragraphs 1 and 2 of Article 59 shall come into force with respect to all Contracting Parties three months after the expiry of a period of twelve months following the date of communication by the Secretary-General of the United Nations to the Contracting Parties, except for those Contracting Parties that have notified the Secretary-General in writing, within that period of their non-acceptance of Annex 11. Annex 11 shall enter into force for Contracting Parties which withdraw their notification of non-acceptance six months after the date on which withdrawal of such notification has been received by the depositary.

2. Any proposed amendment to Annex 11 shall be considered by the Administrative Committee. Such amendments shall be adopted by a majority of the Contracting Parties bound by Annex 11 present and voting.

3. Amendments to Annex 11 considered and adopted in accordance with paragraph 2 of this Article shall be communicated by the Secretary-General of the United Nations to all Contracting Parties for information or, for those Contracting Parties bound by Annex 11, acceptance.

4. The date of entry into force of such amendments shall be determined at the time of their adoption, by a majority of the Contracting Parties bound by Annex 11 present and voting.

5. Amendments shall enter into force in accordance with paragraph 4 of this Article unless by a prior date determined at the time of adoption, one-fifth or five of the States which are Contracting Parties bound by Annex 11, whichever number is less, notify the Secretary-General of their objection to the amendments.

6. On entry into force, any amendment adopted in accordance with the procedures set out in paragraphs 2 to 5 of this Article shall for all Contracting Parties bound by Annex 11 replace and supersede any previous provisions to which the amendment refers.

6. **Article 61**

The Secretary-General of the United Nations shall inform all Contracting Parties and all States referred to in Article 52, paragraph 1 of this Convention of any request, communication, or objection under Articles 59 ~~and~~, 60 ***and 60 bis*** above and of the date on which any amendment enters into force.

B. Annex 11 – The eTIR procedure

1. **Part I**

Article 1
Scope of application

The provisions in this Annex govern the implementation of the eTIR procedure as defined in Article 1, paragraph (s) of the Convention and shall apply in the relations between Contracting Parties bound by this Annex, as provided for in Article 60 bis, paragraph 1.

Article 2
Definitions

For the purposes of this Annex:

(a) The term "eTIR international system" shall mean the Information and Communication Technology (ICT) system devised to enable the exchange of electronic information between the actors involved in the eTIR procedure.

(b) The term "advance cargo information" shall mean the information provided to the competent authorities in the prescribed form and manner of the intention of the holder, or his or her representative, to place goods under the eTIR procedure or pursue a TIR transport.

(c) The term "declaration" shall mean the act whereby the holder, or his or her representative, indicates in the prescribed form and manner an intent to place goods under the eTIR procedure.

(d) The term "accompanying document" shall mean the paper document printed in line with the guidelines contained in the eTIR technical specifications and used for the fall-back procedure as set out in Article 9 of this Annex. The accompanying document shall also be used to record incidents en route pursuant to Article 25 of this Convention.

Article 3
Implementation of the eTIR procedure

1. Contracting Parties bound by Annex 11 shall connect their customs systems to the eTIR international system in line with the conceptual, functional and technical specifications.

2. Each Contracting Party is free to establish by which date it connects its customs systems to the eTIR international system. The date of connection shall be communicated to all other Contracting Parties bound by Annex 11 at least six months prior to the effective date of connection.

Article 4
Composition, functions and rules of procedure of the Technical Implementation Body

1. The Contracting Parties bound by Annex 11 shall be members of the Technical Implementation Body. Its sessions shall be convened at regular intervals, as required for the maintenance of the conceptual, functional and technical specifications of the eTIR procedure. The Administrative Committee shall be regularly informed of the activities and considerations of the Technical Implementation Body.

2. Contracting Parties which have not accepted Annex 11 as provided for in Article 60 bis, paragraph 1 and representatives of international organizations may attend sessions of the Technical Implementation Body as observers.

3. The Technical Implementation Body shall monitor the functional and technical aspects of implementing the eTIR procedure, as well as coordinate and foster the exchange of information on matters falling within its competence.

4. The Technical Implementation Body shall propose, discuss and adopt amendments to the technical specifications of the eTIR procedure and decide on the appropriate transitional periods for their implementation.

5. The Technical Implementation Body shall propose, discuss, and adopt amendments to the functional specifications of the eTIR procedure, which shall be

transmitted to the Administrative Committee and approved by a majority of Contracting Parties bound by Annex 11 and implemented at a date to be determined at the time of approval.

6. The Technical Implementation Body may consider amendments to the conceptual specifications of the eTIR procedure if so requested by the Administrative Committee. Amendments to the conceptual specifications of the eTIR procedure shall be approved by a majority of Contracting Parties bound by Annex 11 and implemented at a date to be determined at the time of approval.

Article 5
Submission of advance cargo information

1. Advance cargo information shall be submitted in electronic form.

2. Contracting Parties bound by Annex 11 shall accept the submission of advance cargo information via the eTIR international system.

3. The competent authorities shall publish the list of other electronic means by which advance cargo information can be submitted.

Article 6
Authentication of the holder

1. The holder, or his or her representative, submitting advance cargo information directly to the competent authorities shall be authenticated in accordance with applicable national legislation.

2. Contracting Parties bound by Annex 11 shall recognize authentications performed by the eTIR international system.

3. The competent authorities shall publish a list of authentication mechanisms other than that specified in paragraph 2 of the present Article that may be used for authentication.

Article 7
Mutual recognition of the authentication of the holder

The authentication of the holder performed by the competent authorities of the Contracting Party bound by Annex 11 which accepts the declaration shall be recognized by the competent authorities of all subsequent Contracting Parties bound by Annex 11 throughout the TIR transport.

Article 8
Additional data requirements

Competent authorities should limit data requirements to those contained in the functional and technical specifications. However, if additional data requirements are imposed, the competent authorities shall endeavour to facilitate the submission of such data so as not to impede TIR transports carried out in accordance with this Annex.

Article 9
Fallback procedure

In the event that an eTIR procedure is impeded for technical reasons, the competent authorities:

(a) may use the electronic fallback system as defined in the functional and technical specifications; or

(b) shall accept the accompanying document in line with the procedure described in the functional and technical specifications.

Article 10
Hosting of the eTIR international system

1. The eTIR international system shall be hosted under the auspices of the United Nations Economic Commission for Europe (UNECE).

2. UNECE shall assist countries in connecting their customs systems to the eTIR international system, including by means of conformance tests to ensure their proper functioning prior to the operational connection.

3. [Pursuant to paragraphs 1 and 2 of this Article, unless the eTIR international system is financed by resources of the United Nations regular budget, the required resources shall be subject to the financial rules and regulations for extra-budgetary funds and projects of the United Nations. The financing mechanism and budget for the operation of the eTIR international system at the UNECE shall be decided and approved by the Contracting Parties to the TIR Convention].

Article 11
Administration of the eTIR international system

1. UNECE shall make the appropriate arrangements for the storage and archiving of the data in the eTIR international system for a minimum period of 10 years.

2. All data stored in the eTIR international system may be used by UNECE on behalf of the competent bodies of this Convention for the purpose of extracting aggregated statistics.

3. The competent authorities of Contracting Parties involved in a TIR transport carried out under the eTIR procedure which becomes the subject of administrative or legal proceedings concerning the payment obligation of the person or persons directly liable or of the national guaranteeing association, may request UNECE to provide information stored in the eTIR international system pertaining to the claim in dispute for verification purposes. This information may be produced as evidence in national administrative or legal proceedings.

4. In cases other than those specified in this Article, the dissemination or disclosure of information stored in the eTIR international system to non-authorized persons or entities shall be prohibited.

Article 12
Publication of the customs offices capable of handling eTIR

The competent authorities shall ensure that the list of customs offices of departure, customs offices en route and customs offices of destination approved for accomplishing TIR operations under the eTIR procedure, is at all times accurate and updated in the electronic database for approved customs offices, developed and maintained by the TIR Executive Board.

Article 13
Legal requirements for data submission under Annex 10 of the TIR Convention

The legal requirements for data submission, as set out in Annex 10, paragraph 1, 3 and 4 of this Convention, are deemed to be fulfilled by implementing the eTIR procedure in accordance with Annex 11.

2. **Part II**

Explanatory notes

1. ***Part I – Article 3, paragraph 2***

Contracting Parties bound by Annex 11 are recommended to connect their national customs system to the eTIR international system at the moment Annex 11 enters into force for them, but ideally not later than one year as of that date.

2. ***Part I - Article 5, paragraph 3***

Contracting Parties bound by Annex 11 are recommended to allow, in as far as possible, the submission of advance cargo information by the methods indicated in the functional and technical specifications.

3. ***Part I - Article 6, paragraph 2***

Contracting Parties bound by Annex 11 are recommended to recognize, in as far as possible, the authentications performed by the methods indicated in the functional and technical documentation.

4. ***Part I - Article 10, paragraph 3***

Contracting Parties shall decide on the appropriate time at which the operational costs of the eTIR international system shall be financed through an amount per TIR transport [carried out under the eTIR procedure]. The exact modalities of such financing shall be decided by the Administrative Committee [in accordance with Article 60 bis].